

From: John Dowd
To: Microsoft ATR
Date: 1/25/02 4:27pm
Subject: Microsoft Settlement

Dear Sirs:

Below is an article excerpted from the ZDNet News a magazine that has been continually anti-MSFT in its editorial bias. Even they see the frivolousness and pointlessness of AOL's latest foray into this matter. This suit is not about consumers as there has been no harm to consumers demonstrated rather there is only the speculation of possible future harm. If that is the rule to which a company is to be held who would stand up under this benchmark? This whole thing is an effort on the part of MSFT's competitors to win in the halls of government what they couldn't win in the market place. They want to use the government to enrich themselves without bringing better products to the market place. It is really disgusting to find my government not being smart enough to see that it is being manipulated by losers.

Sincerely,

John F. Dowd

Commentary

Advice to AOL: Sit down, shut up

By David Coursey
AnchorDesk
January 24, 2002, 5:20 AM PT

COMMENTARY--AOL Time Warner's decision to sue Microsoft--essentially repeating the federal antitrust case all over again--is hardly surprising. Yet I had hoped that instead of wallowing in the past, Chairman Steve Case and his East Coasters would realize that Netscape lost the browser war because it deserved to lose. And Netscape has continued losing, because AOL Time Warner hasn't done very much to make it a winner--perhaps in a cynical attempt to maintain a cause of action against Microsoft.

Did Microsoft play hardball with Netscape? Of course it did. Did Microsoft go over the line of legality in certain business practices? That's what a federal court has ruled, and the Justice Department has agreed to settle. Is that settlement enough? I don't think so and have already called for stiffer sanctions. But should AOL Time Warner sit down and shut up? Damn straight.

THE NEW LAWSUIT seems to have been filed for the valid reason that the proposed settlement doesn't go far enough. But another decade of legal battles--kept alive by East Coast corporate types dueling people from Washington state--won't improve the situation. AOL Time Warner should push for a better settlement, but opting for endless court actions to settle issues long in the past doesn't seem right.

Indeed, Netscape should have sued years ago, and its case--like the federal one--should be winding its way down rather than just getting started.

I am sure it must be galling for Steve Case and whatever part of Netscape's soul that survived assimilation into AOL (and again into Time Warner) to see Microsoft enjoying a resurgence.

BUT THE FACT REMAINS that since AOL has owned Netscape, it has used its own mighty resources--more subscribers than Microsoft's MSN--and its ability to swing deals with hardware OEMs to very little effect.

Netscape went off into its ill-advised Mozilla open-source effort and has released new versions of its browser that failed to ignite the market. As I remember, the Netscape 6 reviews pretty much said that Microsoft had the better browser.

So if it seems like AOL Time Warner has been swimming upstream, it's not all Microsoft's fault. Again stipulating--I love getting into this Perry Mason stuff--that Microsoft violated antitrust laws and should be punished, the real reason Netscape failed is very simple: customers.

I AM AMAZED that people still debate this, though I think it's mostly from an unwillingness to concede any point to the hated Microsoft, but the browser really does belong as part of an operating system. Indeed, browser technology (along with look and feel) has provided a common user interface and way of doing things. Tying the browser to the operating system, as Microsoft has done, has made computing easier for all of us.

Microsoft was right to bring browsing into the OS, just as it is right to better support multimedia and photography, home video, and soon, broadcast television. Does doing this compete with companies that build stand-alone applications? Of course it does.

But what those companies are supposed to do is create better products that extend and enhance what Microsoft builds into Windows. What Netscape did--actually what AOL did to Netscape--was throw in the towel. That, or the battle just wasn't winnable, not so much because of Microsoft, but because Netscape/AOL Time Warner didn't offer customers anything they really wanted--other than an alternative to Microsoft, and that argument seemed to fall on deaf ears.

If AOL had run the Netscape business to compete, things might be different today. Instead, AOL turned the shell of Netscape into a media company with just enough development around to maintain the façade of being a software company. AOL is many things, after all, but one of the things it's not is a software company.

Suppose AOL had invested heavily in the Netscape server businesses or had sold it to someone who would? Maybe things would be different today, as Netscape browsers used cool features available only from Netscape servers and Microsoft was left in the dust.

MAYBE NETSCAPE AND SUN could have done something more important with Java. Or perhaps the Novell/Sun/Netscape alliance could have gone somewhere. Perhaps if Netscape had been given the resources to fight on, things would be very different today.

I doubt it. Which is why I think Netscape has gone the way it has. Customers voted, and they voted for Microsoft. Were they pushed a bit by Microsoft's illegal practices? Surely, though not as much as I think Microsoft's critics want to believe.

AOL Time Warner has every right to sue, and the case is not without merit. But I hope this new lawsuit is more a ploy to get a better settlement in the federal case--which is warranted--than a means to prolong this battle indefinitely.

But if AOL Time Warner wants to battle over what Microsoft did to Netscape, then the case ought to at least figure in what AOL itself did to the once high-flying browser pioneer.